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THE PROCTER & GAMBLE COMPANY INTELLECTUAL PROPERTY DIVISION WINTON HILL BUSINESS CENTER - BOX 161 6110 CENTER HILL AVENUE CINCINNATI, OH 45224			HAND, MELANIE JO	
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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/603,522  
Filing Date: June 25, 2003  
Appellant(s): MIURA ET AL.

**MAILED**  
**JUL 26 2006**  
**GROUP 3700**

James E. Oehlenschlager  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed May 3, 2006 appealing from the Office action mailed December 14, 2005.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

No amendment after final has been filed.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jordan ('954) in view of Haarer et al ('192).

With respect to **Claim 1**: Jordan ('954) teaches training pant 20 (Fig. 1) with body contacting layer 42, garment contacting layer 40, and absorbent core 44 disposed between the body contacting layer and the garment contacting layer, the core 44 having a core edge. (Fig. 3) The core edge defines a core region within the core edge and an outer region outside the core region. Body-contacting layer 42 and garment-contacting layer 40 extend outward from said core edge into said outer region as shown in Fig. 3 and are joined together in said outer region by any suitable means as is well known in the art. (Paragraph 0083) Jordan ('954) teaches a graphic printed on the inner, body-facing surface 64 of inner layer 60 of outer cover 40. As can be seen in Fig. 2, simulated fly opening 82, which Jordan teaches is a permanent graphic included as part of the outer cover graphic (¶ 0077), is printed in at least a portion of said outer region beyond said core edge. Jordan ('954) teaches that liner 42 and outer cover 40 jointly define at least one graphic region (Paragraph 0007).

Jordan ('954) does not teach a first light transmittance corresponding to the body-contacting layer 42. Haarer ('192) teaches an absorbent article with a substantially transparent (i.e. first light transmittance between 60% and 100% (Col. 2, lines 43-45)) liquid permeable cover layer. Such transparency would allow the fly opening permanent graphic 82 printed on a body facing layer of garment contacting layer 40 taught by Jordan to be seen through the body-contacting layer 42 taught by Jordan in said outer region. Haarer ('192) teaches that the transparency of the cover layer allows it to be non-discriminable through clothing and thereby provides discretion to the user. Therefore, it would be obvious to one of ordinary skill in the art to modify the body-contacting layer taught by Jordan ('954) to be substantially transparent to

allow graphics printed on a body-facing surface of a garment contacting layer in an outer region of the absorbent core to be seen through said body-contacting layer and simultaneously provide a more discrete article for use by a wearer as taught by Haarer ('192).

With respect to **Claim 2:** Please see the rejection of Claim 1 in addition to the following: Jordan teaches active object graphics 78 are in liquid communication with absorbent assembly 44, meaning that "liquid such as urine is capable of moving between the active object graphic and the absorbent assembly under ordinary use conditions" ('954, ¶ 0078) Although Jordan is silent regarding placement of active object graphics 78 on a garment facing surface of bodyside liner 42, given that active graphics 78 are in liquid communication with absorbent assembly 44, and that Jordan teaches that the same material that is used for the inner layer of outer cover 40, where active graphics 78 are disposed, is used for said body-contacting layer ('954, ¶¶ 0012,0081), it would be an obvious modification to one of ordinary skill in the art to dispose active graphics 78 on a garment facing surface of body-contacting layer 42 in at least a portion of the outer region. These graphics serve as wetness indicators by appearing or disappearing upon contact with urine, and the target area for receipt of urine insult from the wearer is located on said body-contacting layer, therefore it would be obvious to one of ordinary skill in the art to dispose such graphics on a garment-facing surface of the body-contacting layer in a least a portion of said outer region to provide a visible wetness indicator.

With respect to **Claims 3 and 5:** Jordan ('954) teaches graphics disposed on garment contacting layer 40 having a second light transmittance of 80% or greater that is interpreted here as transparent based upon the teaching of Haarer for transparency (Col. 2, lines 43-45),

which allows a user to see the graphic on the body-facing surface of garment contacting layer 40 through said garment contacting layer. (Paragraph 0010)

With respect to **Claim 4**: Jordan ('954) does not teach that body-contacting layer 42 is transparent and thus does not teach a first light transmittance corresponding to said body-contacting layer. Haarer ('192) teaches an absorbent article with a substantially transparent (i.e. light transmittance between 60% and 100% (Col. 2, lines 43-45)) liquid permeable cover layer. Haarer ('192) teaches that the transparency of the cover layer allows it to be non-discriminable through clothing and thereby provides discretion to the user. Therefore, it would be obvious to modify the body-side liner taught by Jordan ('954) to be substantially transparent, i.e. to have a light transmittance of at least 10%, to provide a more discrete article for the user as taught by Haarer ('192).

With respect to **Claims 6 and 7**: Jordan ('954) does not teach a first light transmittance for body contacting layer 42 and therefore does not teach a difference between said first transmittance and a second transmittance for garment contacting layer 40. Haarer ('192) teaches that both a body-contacting layer and a garment-contacting layer have a light transmittance of between 60% and 100%, therefore the difference between the two transmittances will fall in the range of 0% to 40%, thus satisfying the limitations set forth in claims 6 and 7. Haarer ('192) teaches that the transparency of the cover layer allows it to be non-discriminable through clothing and thereby provides discretion to the user. Therefore, it would be obvious to one of ordinary skill in the art to modify the body-contacting layer and garment contacting layer taught by Jordan ('954) to possess these light transmittance ranges and resulting light transmittance differences to provide a more discrete article for the user as taught by Haarer ('192).

With respect to **Claim 8:** The combined teaching of Jordan and Haarer teaches a percent light transmittance that correlates to transparency, but does not teach a Hunter Lab total color difference. At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to apply the Hunter Lab Total Color Difference (HLTCD) method to the article taught by Jordan ('954) and Haarer to yield a color difference in the range set forth in claim 8 because Applicant has not disclosed to Examiner's satisfaction that a HLTCD measurement for the difference between the outer region and the absorbent core of 0.5 – 73 provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected the combined teaching of Jordan and Haarer and the claimed invention to perform equally well with any HLTCD measurement because both articles would perform the same function of absorbing exudate equally well considering an HLTCD value has no bearing whatsoever on the absorbing capacity of a sheet, core or article. Therefore, it would have been *prima facie* obvious to modify the article of the combined teaching of Jordan and Haarer to obtain the claimed invention as specified in claim 8 because such a modification is considered an optimization of an aesthetic property (i.e. color and opacity (which results from a low or zero color difference value)) which fails to patentably distinguish over the combined teaching of Jordan and Haarer.

With respect to **Claims 10 and 11:** Core 44 taught by Jordan has longitudinal side edges and lateral end edges, and as previously stated with respect to claim 1, said outer region lies outside the edge of core 44 and is therefore also disposed outside both the longitudinal edges (claim 10) and lateral edges (claim 11) of said core 44.

With respect to **Claim 12**: Jordan teaches that chassis 32 comprised of body contacting layer 42 and garment contacting layer 40 and is comprised of a pair of containment flaps (not shown). (¶ 0068) Jordan does not explicitly teach that the flaps are comprised of portions of said body- and garment-contacting regions that extend into said outer region, however since both layers do extend beyond the side edges of core 44 and are joined together, said layers are capable of extending outward into said outer region to form said containment flaps.

With respect to **Claims 9,13 and 14**: Jordan ('954) does not explicitly teach a graphic protection layer in absorbent chassis 32. As stated in the previous Office action, Applicant has set forth in the disclosure that "a material which has a suitable light transmittance can be selected for the graphic protection layers 34 in the outer region 26, while another material which has a suitable liquid permeability can be selected for the topsheet layer 32 in the core region 25. This is beneficial since it is not always easy to find one material that can meet the both requirements for the body contacting layer 30 (e.g., appropriate light transmittance and liquid permeability)." (Specification, Page 6, lines 20-26)

Haarer ('192) teaches specific available transparent materials for manufacturing a cover sheet, a 9 gsm polypropylene, code SB-PTE 09 available from Shalag, Upper Tieberias, Israel (Col. 3, lines 12-18), and for the impermeable transparent backsheet a polyethylene monolithic film under the trade name Hytrel by DuPont or Atochme by Pebax (Col. 4, lines 38-46). Haarer ('192) is thus teaching accessible, known materials that possess both acceptable liquid permeability (or impermeability) and acceptable transparency properties and thus graphic protection properties, and thus also that said graphic protection material possesses a light transmittance (by being transparent) that falls in the range set forth by Haarer for the light transmittance of said cover sheet. Since this material is known and accessible and provides

discretion in the form of a non-visible article as viewed from outside of a garment as is taught by Haarere and previously cited herein, it would be obvious to one of ordinary skill in the art to use the material taught by Haarer to form a graphic protection layer for use with the article taught by Jordan to provide a more discrete article that prevents premature wear or fading of said graphics.

#### **(10) Response to Argument**

Applicant's arguments filed September 20, 2005 have been fully considered but they are not persuasive.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, modifying the body-contacting layer taught by Jordan by replacing it with another suitable topsheet material with increased light transmittance would have a reasonable expectation of success, as both articles are absorbent articles therefore satisfying the criteria of analogous art for a rejection under 35 U.S.C. 103(a) ("103 rejection"). The two articles have a substantially identical structure, the only difference being the dimensions of the analogous layers since Haarer is teaching a sanitary napkin and Jordan teaches a training pant. Examiner has cited in a previous Office action and again in this Office action the motivation for modification and combination as taught specifically by Haarer and cited herein. Examiner believes that this also addresses applicant's argument that the fact that references can be

combined does not render the combination obvious. Examiner agrees, but again directs applicant to the substantially identical structure of the two teachings that does make this particular combination obvious.

With regard to applicant's argument that neither Jordan nor Haarer teaches nor suggests the placement of graphics of a garment in combination with the limitation that those graphics be visible to the wearer, Examiner disagrees and reminds applicant that the rejection is a 103 rejection and therefore the claims would have to overcome a rejection based on the combined teaching of Jordan and Haarer, not each one individually. Jordan does fairly suggest placement of graphics on a body-contacting layer because Jordan teaches graphics that are disposed so as to be "in liquid communication with absorbent assembly 44" ('954, ¶ 0078). There are a number of different placements of said graphics that are encompassed by that teaching other than the explicit examples given by Jordan, e.g., the inner layer of outer cover 40. Further, since Jordan also teaches that the inner layer of garment contacting layer 40 and body-contacting layer 42 are comprised of the same liquid-permeable material, Jordan does in fact fairly suggest placement of graphics on said bodyside liner, either on a body-facing or garment-facing surface since both are in liquid communication with the absorbent assembly according to Jordan's definition of the term. ('954, ¶ 0024) Thus the combined teaching of Jordan and Haarer, who contributes a transparent cover sheet that would allow visibility and protection of such a graphic, would indeed lead one of ordinary skill in the art to the claimed invention.

With regard to applicant's argument that the Jordan and Haarer references teach away from the claimed invention, Examiner has already addressed the Jordan reference's teachings herein and believes that Jordan does not teach away from the claimed invention for reasons already stated with respect to applicant's other arguments. With regard to the Haarer reference teaching away from the prior art of Jordan and the claimed invention, Haarer teaches that the

materials for the outer cover and cover sheet are pigment-free and that *only the outer cover should remain pigment-free*. (emphasis added), i.e. the cover sheet taught by Haarer can have graphics disposed thereon. ('192, Col. 3, lines 13-15) The outer cover taught by Haarer can have graphics printed thereon, as graphics are not necessarily pigment-based. Graphics can comprise patterns such as dots or lines created from needling or embossing. The fact that the outer cover and cover sheet are comprised of pigment-free materials has no bearing on their ability to further function in the intended manner should pigment be added to them. Since the combined teaching of Jordan and Haarer fairly suggests the existence of graphics on the cover sheet, and Haarer teaches that only the outer cover must remain pigment-free, the function of the light transmitting material of the cover sheet of the combined teaching of Jordan and Haarer will not be destroyed, thus the combined teaching is valid and renders claims 1-14 unpatentable.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Melanie J. Hand

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